

Ownership and Control of Maori Land: Some Lessons for South Africa

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Preface

The questions associated with Maori Land Claims in New Zealand are currently being considered by the organisations concerned and appropriate actions are being taken to resolve the long standing issues. This Paper considers an associated aspect of Maori land holding, that of under utilisation of Maori land. The author reviews the literature on the subject and highlights the issues that have contributed to this under utilisation. The aspects of ownership and property rights are central to the issue. This Paper examines these aspects and describes methods by which the situation can be improved. The conclusion highlights the similarities between the New Zealand situation and that found in South Africa and recommends appropriate ways of dealing with the issues in South Africa based on the New Zealand experience.

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Ownership and Control of Maori Land: Some Lessons for South Africa

This paper reviews New Zealand policy that replaced customary tenure with titles to Maori land, focusing on issues relevant to South Africa. Massive redistribution of Maori land is explained in terms of dubious reasons for titling and inadequate property rights conferred by the programme. Emphasis then shifts to institutions that emerged to deal with problems of landlessness and low farm incomes created by titling, and to the success of private incorporations and Trusts in particular. It is concluded that such institutions may, under certain conditions, be useful to smallholders in the homelands and to groups of farmers who acquire freehold land in South Africa.

1. Introduction

This paper reviews changes in Maori land tenure and draws on New Zealand's experience to explore the merit of some policy options facing South Africa. The conclusions apply both to the homelands of South Africa (where land tenure is influenced by customary institutions) and to freehold land owned by groups of small farmers. The common denominator is the nature of individual property rights to land.

Taken together, the homelands of South Africa account for only 14 per cent of the country but they are densely populated. Farms are very small and incomes low, yet a large proportion of the arable land is under-utilised. Allan Low's (1986:50-53) model of a small farm-household in Southern Africa appears to explain this anomaly. Given the custom of allocating each family a primary right to cultivate specific lands and the virtual absence of alternative forms of social security, households tend to retain their holdings even if they derive all of their income from off-farm sources. As a result, farm sizes diminish with population growth, and households with access to wage employment find it cheaper to import food than to grow it. In rural KwaZulu, farm income typically accounts for less than ten per cent of total income and fewer than 20 per cent of households are self sufficient in food staples. In essence, Low's model explains why so many households have very little incentive to crop their land intensively but it does not explain why this land is under-utilised. Aggregate data conceal the presence of a numerically large group of households that are very dependent upon farming, who crop their land intensively - despite poor infrastructure and services - and who would like to rent in land left idle by neighbours. However, the rental market appears to be constrained by insecure tenure stemming from two main sources; (a) the risk of losing land as a result of a transaction is high, and (b) the exclusivity of primary rights is, in some instances, undermined by secondary rights assigned to other users (Lyne et al, 1994). Not surprising, the idea of titling land has some support in spite of its poor performance elsewhere, the problems associated with a landless class, and mounting evidence that allocative efficiency can be accomplished at lower cost and more equitably by enabling endogenous change in customary institutions - i.e. by implementing 'adaptive' rather than 'replacement' policies (Bruce and Freudenberger, 1992). Adaptive strategies are rooted in the observation that population growth and better prospects for commercial farming tend to drive customary tenure in the direction of more exclusive and assured land rights (Feder and Noronha, 1987).

There is widespread concern about the skewed distribution of land occupancy in South Africa as the vast majority of land is privately owned by a small minority of white farmers. Without visible redistribution the social stability required for economic growth will be

lacking (ANC Land Commission, 1991). A variety of policies to redistribute freehold land are being debated and a compromise involving distorted market forces appears to be gaining acceptance. This approach will most probably involve voluntary land sales under conditions of progressive land taxes and subsidised capital for new entrants. Whatever the method of redistribution, it is very likely that groups of emerging farmers will become co-owners of freehold land. This outcome also raises questions about the nature of individual rights to land. Recent evidence from South Africa indicates a decline in investment and productivity where freehold farms are transferred to numerous co-owners, each possessing inclusive rights (i.e. undivided shares) to the property (Kille, 1993).

Against this background, New Zealand's attempt to replace customary tenure with freehold is particularly instructive. The first part of this paper examines the effects of titling on individual incentives and the distribution of land ownership. Attention is then focused on institutions that emerged once it became clear that titling detracted from farming efficiency on Maori land, and that further alienation of this land was politically unacceptable. The final section concludes with some obvious lessons for policy-makers in South Africa.

2. The Redistribution of Maori Land

Customary land tenure in New Zealand was similar to land tenure in many parts of Africa: Land was defended by the tribe, and family groups were assigned primary rights to occupy and cultivate specific areas. Secondary rights (e.g. to hunt) were also assigned so that family groups might possess different rights to the same block of land. These rights were secured through continued occupation or use, and succession was based on unbroken descent from an ancestor whose rights were acknowledged. Family groups could not alienate land assigned to them unless secondary users concurred. Some commentators refer to a veto on all alienation, including gifting, of land outside the tribe (Layton, 1984). Policy decisions were debated on the *Marae* (tribal meeting place) with all members of the tribe having a right to speak. In practice, land rights were (and still are) a prerequisite for participation in joint decision-making (Asher and Naulls, 1987:7). *Turangawaewae* (a standing place for the feet) is the name given to the right to take part in tribal decisions, a privilege no doubt enhanced by recent decisions to compensate tribes meaningfully for past injustices. Although relatively few Maori owners currently occupy or farm their land, *turangawaewae* presents a strong incentive to retain rural holdings.

The Treaty of Waitangi signed in 1840 provided a legal foundation for changes in property rights - a process no less contentious now than it was 150 years ago. The basic terms of the bargain were that the Queen was to govern and the Maoris were to be her subjects; in return, their chieftanships and possessions were to be protected, but sales of land to the Crown could be negotiated (Government Management, 1987:319). However, there is little doubt that the Treaty was interpreted differently by the Maori chiefs who signed it (and some significant tribes did not sign). Differences in interpretation arose partly from discrepancies between the English and Maori versions of the document. Both versions comprise three articles: The first and third articles dealt with the exchange of power for protection. In the English version, the Maori chiefs cede to the British Crown "absolutely and without reservation all the rights and powers of sovereignty" but in the Maori version it was not sovereignty but rather something closer to governorship that was transferred, and in no way diminished the authority of the chiefs (O'Connor, 1991). The second article addressed property rights and

made it quite clear what Maoris were not giving away. Even in the English text the Crown confirms and guarantees Maori full exclusive and undisturbed possession of their lands, forests, fisheries and other properties -unless proprietors sold land voluntarily to the Crown. Some confusion was created by the Crown's preemptive right in land sales as it was not clear whether Maori could sell only to the Crown, or if the Crown merely had the right of first refusal. However, the key issue was that successive New Zealand governments gave legal precedence to the first article.

At the time the treaty was signed there were approximately 100,000 Maori people in New Zealand and no more than 2000 settlers (Ogle, 1993:6). Maori far outnumbered *Pakeha* (settlers), controlled virtually all of the land (26.7 million hectares) and were presumably confident that they could enforce the Treaty. Maoris had sold some land to settlers before 1840, but were probably unaware of the true construction which foreigners placed on deeds of purchase. However, any doubts about the permanence of alienation resulting from land sale faded early in the 1840s following a dramatic increase in European immigration to the new colony (Asher and Naulls, 1987:16). Despite this realisation and a surge in Maori agriculture - which met most of the European food needs and accounted for half of the colony's total exports in 1855 - land sales continued. In many instances sales were prompted by disputes over 'ownership'. Chiefs and other individuals sold, often without regard to kin, before another claimant could alienate the land. There is some evidence that the Crown used its monopsony power to extract substantial margins between prices that it paid Maori sellers and those which it charged settlers. Indeed, part of Governor George Grey's success in acquiring land (13 million hectares) has been attributed to unscrupulous deals (Sinclair, 1988:82-83). By 1860, settlers outnumbered Maori and competition for both land and authority was intense. War broke out when troops were sent to remove a group protesting the sale of their land by a rival clan.

The land wars precipitated legislation that hastened the alienation of Maori land. Sovereignty became a practical reality as Maori and their land were brought under English civil and criminal law (Sorrenson, 1981:176). Under the Suppression of Rebellion and Land Settlement Acts of 1863, approximately 0.7 million hectares of high quality agricultural land were confiscated and either sold to settlers or used for Military Settlement. More importantly, the Native Land Acts of 1862 and 1865 commissioned the Native Land Court to replace customary tenure with title-deeds. A primary objective of titling was to reduce transaction costs to buyers, a policy that paved the way for both government and, from 1865, private land purchases (Smith, 1960:12). Critics have stressed that the land wars, confiscation and titling programme clearly revealed official disregard for the Treaty.

To reduce transaction costs, the 1865 Act specified that groups of users would be represented by a maximum of ten names on a title-deed, and empowered the named owners to sell the land. It was assumed that customary law would prevent named owners from selling land without sanction from unnamed owners. However, sovereignty and titling had decimated the influence of customary law and unapproved sales proliferated, fuelling poverty through involuntary dispossession. In 1873, government attempted to resolve the problem by insisting that all owners' names be listed on the title. This extinguished any vestiges of exclusive rights to tribal land. The implications were twofold: First, there was very little that thrifty or provident owners could do to prevent free-riding as the groups were large and each member enjoyed the same rights to all parts of the land. The resulting uncertainty acted as a disincentive to conserve resources or to invest in agriculture (Smith, 1948:184-185). Second, because individual owners were unable to capture rents they were inclined to either

(a) sell their interest (often secretly) to a buyer who would recruit signatures, one by one, until the land sale was complete, or (b) partition their interest if the resultant holding was large enough to make farming worthwhile. However, even where partitioning was viable, selling was easier as any attempt to extinguish the rights of other owners resulted in protracted court hearings. In addition, the government made no effort to assist or train Maori farmers until the late 1920s (Asher and Naulls, 1987:41).

So, for a while, titling facilitated the sale of Maori land to 'more productive' farmers. Of course, the gains in allocative efficiency were largely contrived as titling distorted the incentives facing initial owners. The redistribution of land occurred rapidly until 1920, driven largely by European immigration and augmented by sections of the Native Land Acquisition Settlements Act of 1893, the Public Works Act of 1908 and the Native Land Act of 1909 which permitted government to expropriate land that was not for sale. However the process slowed markedly after 1920, and there has been almost no change in the area of Maori land since 1975. Of course, the term 'Maori land' relates only to land owned by large groups. For example, the official estimates presented in Table 1 exclude land acquired by four or fewer Maori owners.

Table 1 - Maori Land and Population Estimates, 1840 - 1987

Year	Maori Land (Million Ha.)	Share of Country (%)	Maori Population		Share of NZ Population (%)
			Total (000)	Urban (%)	
1840	26.7	99	100.0		98
1852	13.7	51			
1860	9.8	36	56.0		48
1891	4.5	17	44.1		6
1911	2.9	11	52.7		5
1920	1.9	7	56.0	< 10	5
1939	1.8	7	87.8	17	5
1960	1.6	6	161.1	41	7
1975	1.3	5	261.5	72	8
1980	1.2	5	277.2	78	9
1987	1.3	5	299.3	> 78	9

Source: (Asher and Naulls, 1987; Department of Statistics, 1990, 1991 & 1992)

Between 1840 and 1900, 85 per cent of tribal lands were lost and the Maori population more than halved as poverty and disease spread. By the end of World-War II, Maori numbers had recovered and were growing relatively fast, but Maori land accounted for little more than five per cent of the country. Not surprising, the post-war years witnessed rapid Maori urbanization. Exactly why Maori land did not disappear altogether is not that clear, but a breakdown in titling is one of the reasons (section 3). The small increase in Maori land after 1980 most likely reflects a change in the criteria used to classify land, but it coincides with policy changes that gave official recognition to the Treaty of Waitangi and which partly accepted its implications for property rights.

3. New Maori Land Institutions

Fragmentation of ownership ultimately rendered titles to Maori land meaningless. Some authors attribute fragmentation to legislation that divided shares equally between children when owners died intestate, and contrast this with the earlier custom of allocating land to users ahead of heirs. However, it is more likely that bi-lineal succession merely accelerated fragmentation - a process that arose because all shares, no matter how small, provided *turangawaewae* while the economic value of inclusive shares in Maori land did not warrant the effort of keeping them intact.

Today there is no reliable record of Maori freehold titles. Part of this problem stems from the fact that it was not possible to list all of the original owners, or to map all of the original blocks and subsequent partitions. Nor was it possible to maintain accurate records of owners because heirs with only a 'spadeful' interest had very little incentive to register their shares. This problem was aggravated by legislation introduced in a vain attempt to end fragmentation. In terms of this legislation, interests in land that were deemed 'uneconomic' by the Land Court were either vested in the Maori Trustee (a government institution) or in a single beneficiary. Consequently, heirs who sought to register shares risked dispossession and loss of *turangawaewae*. In 1980, the Royal Commission of Enquiry estimated that, at existing levels of funding, it would take 40 years to survey Maori partitions, and up to 50 years to update the ownership lists in some regions (McCarthy, 1980). Nevertheless, the Royal Commission firmly recommended that the records be updated, but failed to address the cause of fragmentation (viz. inclusive shares and *turangawaewae*). According to Asher and Naulls (1987:66), a significant proportion of Maoridom is not in favour of fixing the records as this would reduce transaction costs (without increasing the value of land to inclusive owners) and, once again, transfer blocks of Maori land to outsiders.

At this point it is important to identify the economic problems associated with fragmentation. Previously it was noted that titling undermined individual incentives to farm by establishing a potential for free-riding, a condition that no doubt worsened as the diversity of ownership increased. This may have contributed to the rapid rate of Maori urbanization. Certainly, absenteeism has been identified as a 'problem' of Maori Land. More complex, however, is the problem of under-utilised farmland. Apart from a 1978 estimate that an additional one million stock units could be produced (Metekingi, 1978), there seem to be few objective statements about the level of under-utilisation, but the magnitude of the problem is clearly evidenced by the attempts to resolve it. Before discussing these 'solutions', it is first necessary to establish a causal link between fragmented ownership and poor use of Maori land. McHugh (1980) correctly warns that multiple ownership does not necessarily imply under-utilisation.

After titling, most blocks of Maori land had numerous co-owners, each with decision-making power. When fragmentation and changing technology rendered shares too small to partition and farm independently, many owners turned to other occupations. Like Low's model of small farm-households in Southern Africa, this analysis explains why few owners wanted to farm, but it does not explain the under-utilisation of land. Even if absentee owners preferred to not sell out (in order to retain their *turangawaewae*), they would have benefitted from leasing to farmers - unless renting was constrained by insecure tenure or by transaction costs that were high relative to expected income. From the individual's perspective, both of these conditions prevailed because titling created inclusive property rights to Maori land and, even where exclusive rights could be established, fragmentation increased the number of contracts

each tenant had to negotiate. In essence, these problems converted profit maximisation into a good that could be attained only through collective action; e.g. by all owners surrendering control of their shares to a farm manager or tenant farmer. But with increasing numbers of often distant owners (raising the cost of group action and shrinking the share of benefits accruing to each member), the likelihood of collective action evolving endogenously was bound to diminish. This point was made by W.L. Rees (quoted by McHugh, 1980:38) almost a century ago: "How is it possible to deal with this land or parts of it? No one man, nor any number less than all, can sell or lease a single acre of it, for no one piece belongs to one man more than to another..... The only way left is to lease or sell the land as a whole. Here again, difficulties, delays, vexations, expense and perpetual annoyances are met at every step, until, in nine cases out of ten, the lessee or purchaser, like Job, curses the day which gave him birth". The following subsections briefly review institutions established by government policy, and those which evolved more endogenously, in response these.

3.1 Development Schemes

Maori land Development Schemes were initiated by Sir Apirana Ngata when he was Native Minister in 1929. Although these schemes brought a significant amount of Maori land into production (Metekingi, 1978) their success may be more apparent than real. In practice many of the schemes became government projects administered by the Maori Land Board. The Board, after consultation with the owners, would gazette the land and develop it using subsidised finance. After development, control was transferred to an incorporation or trustees appointed to represent the owners, or to tenant farmers. However, the Board would decide the terms, and would sometimes recover its development costs by farming the land itself. The following recommendations made by the Metekingi Committee hint at the extent to which development schemes distanced owners from their land: (a) The Board should transfer control back to the owners after not more than 25 years, and (b) it should pay (token) rental to the owners during this period of development and supervision. It is hardly surprising that the Committee found owners reluctant to participate in Development Schemes.

The government's decision to finance Development Schemes raises pertinent questions about owners' access to loan capital. Private lenders will only accept shares in land as collateral if foreclosure is possible and the shares can be readily sold in the event of default. The sale of part shares to 'outsiders' has always been controversial and legal restrictions were introduced in 1974. For example, a non-Maori has to buy all the interests in a particular block of land or none at all. Under these conditions a part share offered as collateral has little value to a lender. Clearly, private lenders required a pledge that was binding on all owners. Again, policy had introduced a constraint to development that could be resolved only through collective action.

3.2 Consolidation Schemes

Consolidation Schemes were pursued by Government during the 1950s and 1960s. Essentially these schemes attempted to reduce the number of owners, especially on land gazetted for Development Schemes. This was consistent with the observation that land was farmed productively where viable units had been partitioned by individual owners or by small

groups of owners. For example, McHugh (1980) reports that land was farmed the *Pakeha* way when there were less than ten, and most usually under five owners. Similarly, the Metekingi Committee observed few problems on leasehold land when there no more than ten owners. These observations are consistent with estimates reported by Olson (1971:54) that 'action' groups comprise less than six members.

In practice, Consolidation Schemes attempted to amalgamate spatially fragmented shares held by one or a few owners into a single unit. However, owners excluded from the unit were not always willing to exchange their shares for an 'equal' interest in other Maori land. In addition, there were owners who did not wish to exchange partitions for undivided shares in the unit. Where Planners agreed to leave these partitions intact, disputes arose over how the unit ought to be developed and how income should be shared when some partitions were developed before others (Asher and Naulls, 1987:74). The programme was abolished in 1974.

3.3 Institutions to Facilitate Collective Action

Earlier in this section it was argued that, under the system of property rights created by titling, owners would have to take collective action to alleviate external credit rationing and to increase economic returns from Maori land. The following sections examine various public and private institutions that have influenced the costs of group action.

3.3.1 The Maori Trustee

The Maori Affairs Act of 1953 required leases of Maori land owned by more than ten people to be confirmed by the Maori Land Court at a meeting of owners. The Act, amended in 1974, also set minimum quorums for meetings of owners; e.g. 40 per cent of interests had to be represented if the owners were contemplating a lease of between 15 and 21 years, or if they wished to incorporate and farm the land as a unit. In 1978, the Metekingi Committee reported formidable problems obtaining consensus of opinion from owners. In some districts, increasing numbers of absentee and deceased owners made it impossible to satisfy the quorum requirements. Not surprising, the Maori Trustee assumed much of the responsibility for lease arrangements, negotiating and enforcing terms on behalf of owners. In fact, he was empowered to act without any application from owners, and official concern that owners were not policing tenants invited mediation (Metekingi, 1978). The Trustee was not only entitled to act as owner but also became an owner by accumulating 'uneconomic' shares. Like Development Schemes, the Maori Trustee used statutory powers to transfer land into productive use - intervention that attracted criticism from both owners and tenants (Sheehan, 1975:31).

3.3.2 Incorporations

On the other hand, incorporations evolved endogenously to facilitate group action. Adopting the Coasian 'transaction cost' approach to endogenous institutional change (Demsetz, 1967), incorporations might be viewed as the product of collective action taken by owners seeking higher profits from their land, control over its development, and *turangawaewae*. According to Ward (1958), incorporations first appeared in the East Coast-Gisborne area during the 1890s. Initially the body corporate simply mobilised all the owners in communal labour on the farms. Later the owners elected management committees which directed farm policy and

employed the services of hired labour and managers, and the advice of *Pakeha* accountants and product marketers. Such incorporations were given legal recognition in 1909 and, until recently, represented the most popular method used by owners to develop their land (Asher and Naulls, 1987:39).

With legal recognition the owners became shareholders according to their respective interests in the land, and received dividends on income generated by development activities. Development was simplified because the Management Committee had legal power to enter contracts, borrow money and lease land. Prior to 1967, shares could not be traded on the open market, nor could Management Committees sell land. In practice, the incorporation was kin-based because individuals became shareholders by birth, and succession was usually to intestate shares. Shares rather than land were fragmented and, importantly, heirs could succeed to interests without having to keep the 'fires of occupation' alight. Unlike a company which owns assets and is a separate entity from its shareholders, the corporate body was only a trustee for owners who had distinct rights in the trust property and who could enforce them individually. The trustee and kinship ingredients prompted Sir Apirana Ngata (1940:140) to describe incorporation as "an adaptation of the tribal system, the hierarchy of chiefs being represented by the Committee of Management".

The difficult task of recording shareholders fell to the body corporate and unclaimed dividends did present a problem - but not one which affected the efficiency of land use. Incorporation brought idle Maori land into production, gave owners control, and did not interrupt the succession of *turangawaewae*. However, the latter attribute was eroded by legislation recommended by a government committee of inquiry (Prichard and Weatford, 1965) that focused undue attention on the problem of unclaimed dividends. The amendments represented a move toward private companies, and effectively eliminated the elements of trust and kinship. Ownership of the land was transferred to the incorporation, shares could be sold on the open market and the incorporation was empowered to set a minimum share unit to prevent fragmentation, all of which could deprive owners of *turangawaewae*. Curiously, shares were not detached from land, frustrating efforts by incorporations to increase earnings through non-farm enterprises (e.g. commercial fishing). Disappointed with the amendments, McHugh (1980) argues in favour of Maori Trusts as a more appropriate management institution.

3.3.3 Maori Trusts

The 'transaction cost' approach to institutional change tends to ignore the enormity of the collective action problems that limit the ability of potential gainers to translate their demands into new institutions (Bardhan, 1989). Maori Trusts could be regarded as an exogenous response by government to 'supply' institutional change. The primary object was to concentrate authority in trustees empowered to manage the land as if it were the property of an individual, but Trusts also protected *turangawaewae* and gave owners control over the development of their land. Legislation introduced in 1953 and 1955 provided for two different types of Trust; the large regional (tribal) Trust Board and the smaller *Hapu* (kinship) Trust. These institutions, and in particular the smaller Trusts, have gained acceptance amongst owners (Asher and Naulls, 1987:39, McHugh, 1980).

Hapu Trusts are constituted by the Maori Land Court and, according to Judge Durie (McCarthy, 1980:37), the Court has been largely responsible for promoting such forms of management .. "Sometimes if the individual block is not an economic unit by itself, the Court will endeavour to establish several blocks in the vicinity under one system of

management". Legislation has produced three important differences between Trusts and incorporations: First, the activities and powers of Trusts are not confined to land. Trust Boards, for example, tend to provide owners with benefits like vocational training and health services rather than (often paltry) individual dividends. Second, status as a beneficiary arises by fact of birth and, since outsiders are excluded, there is no danger of losing *turangawaewae*. In fact, non-owners sanctioned as kin can enrol in the register of beneficiaries and, through that voluntary action, acquire *turangawaewae*. Third, although Trusts are obliged to maintain records of membership, the onus is on each beneficiary to ensure that his or her name is included. A recent trend is for owners to list the beneficiary as a family (*Whanua*) Trust. In effect, the onerous task of maintaining records has been decentralised and transferred to people interested in keeping them current.

The 1993 Maori Land Act, referred to as the *Te Ture Whenua* Maori Act, provides for a hierarchy of Trusts reminiscent of the old tribal order where each family group managed property assigned to it. Today, *Whanua* Trusts may own shares in incorporations and in property administered by higher-order Trusts. This arrangement differs markedly from earlier proposals to centralise authority in a few regional Trusts or companies (Sinclair, 1992:168; Paton, 1974:211) and is more consistent with the realisation that central planning does not work where production requires decisive local management.

3.4 Land Courts

Another good reason for decentralised institutions relates to conflict resolution. There have been cases where individuals or small groups farming economic partitions refused to merge with a large group, sometimes preventing projects that would benefit the majority of participants. Although the Maori Land Court is bound by national laws upholding partition, it strives to find compromise solutions that compensate parties when institutional change has redistributive effects. This certainly holds in cases where aggrieved individuals seek to partition land out of a trust or incorporation (McHugh, 1980). Since the likelihood of negotiation is higher when conflicts are confined to smaller kinship groups, decentralisation tends to generate more options. According to Matunga (1993), local institutions now accommodate a variety of preferences - some participants earn dividends on specified shares while others benefit only from the services (e.g. training and health) offered to all members.

Collective action is most appropriate where a large number of co-owners possess inclusive shares in land, and hold them for reasons more important than their meagre agricultural value. Yet, the larger the group and the more egalitarian the distribution of shares, the less likely is collective action (Olson 1971:34). The implication is that action may not be taken precisely where it is most needed. To compound this problem, McHugh (1980) notes that managerial skills, facilities and strong leadership may be lacking in small groups. Accordingly, he recommends a central role for the Land Court and Maori Trustee; vigorously disseminating information about alternative institutions, offering managerial guidance, sharing administrative and transaction costs, and brokering settlements where distributional problems arise.

4. Conclusions: Implications for South Africa

Where large groups of farmers become co-owners of land in South Africa, land use efficiency and equity will be determined largely by the nature of individual property rights. If owners possess inclusive rights and are unable to eliminate free-riding, individuals will have little incentive to farm and no single owner will be able to lease land to an exclusive user. In New Zealand where titling created these conditions on Maori land, co-owners were inclined to sell out to a smaller group or individual buyer. Even in a country where the consequences of alienation have been cushioned by access to non-farm occupations and other forms of social security, growing concern about landlessness and low incomes on Maori land prompted efforts to facilitate teamwork amongst owners. Success has been found in private group institutions (incorporations and Trusts) rather than in public schemes where control over the land was separated from ownership and the profit motive diluted.

At present, groups of emerging farmers who purchase freehold farms in South Africa can partition their shares, and indications are that limits on the minimum size of any sub-division will soon be relaxed. This will facilitate action by individuals who wish to farm independently or as part of a small team - operations which have succeeded in New Zealand. Ideally, South Africa's new constitution will entrench these individual rights, and something creative will be done to reduce the complexity and costs of existing sub-division procedures. Nevertheless, groups of farmers who resettle freehold land should be informed of proven alternatives to partitioning, like private incorporations and Trusts. For those who prefer, or for some reason (like external capital rationing) are obliged, to participate in a large group, a management institution should be selected and established at the outset. Government clearly has a role to play in 'vigorously' disseminating objective information, facilitating collective action and resolving conflicts. Above all, these services need to be decentralised and non-paternalistic.

Despite intense population pressure, there is still scope for family farms in the homelands of South Africa but their success will require greater tenure security for landholders. In theory, this could be achieved by giving individuals (not groups) title to land. However, apart from exposing households to the dire consequences of alienation, titling poses formidable logistical problems - problems that often aggravate tenure insecurity by creating conflicting claims to land. It seems that adaptive strategies may present the only feasible and acceptable way of accommodating demands by both farmers and potential lessors for more secure tenure. These strategies seek to resolve conflicts, particularly those arising when tenure is secured at the expense of secondary use rights, and to disseminate information about local precedents that reinforce security of tenure. Owing to their incremental nature, adaptive strategies can improve incomes through land rental without affecting any customary safeguards against land sale. In addition, they do not preclude group action. On the contrary, there is significant overlap in the type of government support needed to promote either an adaptive or group paradigm, and group institutions may be necessary in areas where primary rights to tribal land were extinguished by 'betterment' programmes and where land rental remains constrained by high transaction costs. Again, it seems desirable that policy should accommodate local circumstances and individual preferences for independent or private group action.

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